TESTIMONY TO THE EDUCATION COMMITTEE CONCERNING RAISED BILL 5425
March 8, 2010

Submitted by Roger E. Bunker, Esq. and Judith S. Bunker of Bloomfield, CT

As parents of a child with a specific learning disability and as professionals with over 40 years teaching and representing children with educational disabilities, we urge the rejection of Section 3(d)(1) of this Bill concerning the placement of the burden of proof on the party seeking an educational due process hearing. As background, Roger is an attorney with 15 years of experience representing children and parents in special education matters, including due process. Many, if not most of these representations have been on a *pro bono* or reduced rate basis as most families are unable to pay the full costs of representation. For over 30 years, Judith was a teacher of children with severe special educational needs for CREC and, most recently as an advocate for them in obtaining the special education services they need. Both are currently appointed by the State Department of Education (SDE) as Surrogate Parents to represent children with special educational needs who are in the care of the State Department of Children and Families.

Section 3 of Bill 5425, if adopted, would shift the burden of proof in all issues to the party requesting an educational administrative hearing. In most educational due process hearings, the party requesting the hearing is a parent seeking an appropriate educational plan and placement for the child. The reason why the parent usually requests a hearing is that when schools and parents disagree about the appropriate educational plan for the student, the plan desired by the school is implemented unless the parent requests a hearing. Currently under Connecticut law, with one exception, the burden of proof is already placed on the party seeking the hearing. The one exception, as stated in State Board of Education Regulations Section 10-76h-14(a) is that "the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency." Thus, the sole aim of Section 3 of Raised Bill 5425 is to force the parent to prove that the school's plan is not appropriate for the student. As the school already has this burden, it is not a new mandate or expense for the school, but rather for the parents if it is shifted. As discussed below, school districts already have the staff, records, skills, training, and other resources needed to bear this burden whereas the parents do not. Therefore, a school is in a better position to show the appropriateness of its program and placement than a parent is to show their inappropriateness.

Currently, Connecticut is in full compliance with federal law and regulations. The United States Supreme Court decision in *Schaeffer v. Weast* applies only to states who have not addressed the burden of proof issue. The Court recognized the importance of state decisions in educational matters. After this decision, the Commissioner of Education for Connecticut issued a Circular Letter stating that "the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP [Individualized Educational Plan]." Shifting the burden to the parents would overturn settled Connecticut policy on this matter. It is noteworthy that the SDE's pending revisions to its regulations, do not include shifting this burden. According to the SDE's statistics, under the present regulations, fewer than

40 cases per year go to a full hearing. Therefore, on average, a school district would only go to a full hearing once every four years. Currently, schools win 67%% of due process decisions and parent less than 30%, with the balance split decisions. In our experience many parents are unable to pursue meritorious claims because they lack the financial means to do so. Unfairly imposing the burden of proving the inappropriateness of the schools' program and placement will further handicap parents. School districts are protected from frivolous complaints as the federal Individuals with Disabilities Education Act (IDEA) permits them to recover their legal fees in such cases from the parents and/or attorneys who file them.

The primary reason that Connecticut has placed the burden of proof on the appropriateness of the school's program and placement on the schools is that, as stated in IDEA, it is the responsibility of the schools to provide students with a free appropriate public education. Parents provide a watchdog function to ensure that state and federal funds are properly used to provide these students with an appropriate education. A school district's staff contains the trained teachers, administrators and other professionals (psychologists; social workers; physical, occupational, speech and language therapists; and reading consultants, etc.) who are experienced in assessing students' needs and designing and implementing educational plans to address those needs. Moreover, schools control the educational records, administer and run the planning meetings, and prepare the documentation of what is discussed and decided at the meetings. In theory, under IDEA, parents are equal participants in decision-making, have the rights to access to all records and to obtain independent assessments of their children. Unfortunately, the reality is that most parents we have assisted are unaware of these rights and are ill-prepared to exercise them. In addition, at educational planning meetings where they are vastly outnumbered by school staff who often speak in acronyms and phrases that parents do not understand, they are intimidated and confused. This imbalance of knowledge, education, status and power is especially unfair to undereducated parents. Moreover, most parents lack the means to hire the expertise needed to understand the schools' assessments and to determine whether or not the schools' proposed programs and placements are appropriate. Such expenses are not reimbursable even if the parents win on all the issues presented at a due process hearing. On the other hand, the schools already have the experts on their payroll and have the resources to confront parents with skilled attorneys at hearings, which make the process even more unequal. Usually, in educational disagreements, hearing officers presume educators to be more knowledgeable than parents about a student's needs. Moreover, the districts either have on staff or are able to hire the experts to whom hearing officers give deference. Unfortunately, financial considerations often provide school districts with a perverse incentive not to provide the services and supports necessary for a special education student to make meaningful educational progress.

In view of the preceding information, we request that this shifting of the burden of proof be rejected as was less than one year ago.

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Surrogate Parent

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